

1 **UNITED STATES DISTRICT COURT**
2 **FOR THE**
3 **EASTERN DISTRICT OF PENNSYLVANIA**

4 **MICHAEL KATILAS,**)

5 Plaintiff)

6 v.)

7 **DIRECT ENERGY, LP,**)

8 Defendant)

9 **Case No.:**

10 **COMPLAINT AND DEMAND FOR**
 JURY TRIAL

11
12 **COMPLAINT**

13 MICHAEL KATILAS (“Plaintiff”), by and through his attorneys, KIMMEL
14 & SILVERMAN, P.C., alleges the following against DIRECT ENERGY, LP
15 (“Defendant”):

16
17 **INTRODUCTION**

18 1. Plaintiff’s Complaint is based on the Telephone Consumer Protection
19 Act (“TCPA”).

20
21 **JURISDICTION AND VENUE**

22 2. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331. See
23 Mims v. Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

24 3. Defendant conducts business in the Commonwealth of Pennsylvania
25 and as such, personal jurisdiction is established.

1 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

2 **PARTIES**

3 5. Plaintiff is a natural person residing in Pottstown, Pennsylvania
4 19464.

6 6. Plaintiff is a “person” as that term is defined by 47 U.S.C. § 153(39).

7 7. Defendant is a business entity with its principal place of business
8 located at 12 Greenway Plaza, Suite 250, Houston, Texas 77046.
9

10 8. Defendant is a “person” as that term is defined by 47 U.S.C.
11 §153(39).

12 9. Defendant acted through its agents, employees, officers, members,
13 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
14 representatives, and insurers.
15

16 **FACTUAL ALLEGATIONS**

17 10. Plaintiff has a cellular telephone number.

18 11. Plaintiff has only used this number as a cellular telephone number.

19 12. Defendant called Plaintiff on his cellular telephone on a repetitive and
20 continuous basis in an attempt to solicit its services.
21

22 13. When contacting Plaintiff, Defendant used an automatic telephone
23 dialing system and automatic and/or pre-recorded messages.
24
25

1 14. Plaintiff knew Defendant was calling him using an automatic
2 telephone dialing system and automatic and/or pre-recorded messages as he
3 received calls from Defendant that began with a delay or pause prior to a live
4 representative of Defendant coming on the line.
5

6 15. Defendant's telephone calls were not made for "emergency purposes."

7 16. Desiring to stop these repeated, unwanted calls, Plaintiff spoke to
8 Defendant soon after the calls began and revoked any previous consent that
9 Defendant had to contact him.
10

11 17. Defendant heard and acknowledged this request to stop calling.

12 18. Once Defendant was aware that its calls were unwanted and was told
13 to stop calling, there was no lawful purpose to making further calls, nor was there
14 any good faith reason to place calls.
15

16 19. In spite of his repeated instruction to stop calling his cellular
17 telephone, Defendant instead continued to call him repeatedly.
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19 20. Plaintiff found Defendant's repeated calls to be harassing, invasive,
20 frustrating, annoying, and upsetting.

21 21. Upon information and belief, Defendant conducts business in a
22 manner which violates the Telephone Consumer Protection Act.
23
24
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COUNT I
DEFENDANT VIOLATED THE
TELEPHONE CONSUMER PROTECTION ACT

22. Plaintiff incorporates the forgoing paragraphs as though the same were set forth at length herein.

23. Defendant initiated multiple automated telephone calls to Plaintiff's cellular telephone using an automatic telephone dialing system and automatic and/or pre-recorded messages

24. Defendant's calls to Plaintiff were not made for "emergency purposes."

25. After Plaintiff told Defendant to stop calling, the Defendant knew or should have known it did not have consent to call and/or that any consent it thought it had was revoked, yet willfully and/or knowingly continued to place calls to Plaintiff's cellular telephone using an automatic telephone dialing system and/or pre-recorded voice.

26. Defendant's acts as described above were done with malicious, intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the purpose of harassing Plaintiff.

27. The acts and/or omissions of Defendant were done unfairly, unlawfully, intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense, legal justification or legal excuse.

1 28. As a result of the above violations of the TCPA, Plaintiff has suffered
2 the losses and damages as set forth above entitling Plaintiff to an award of
3 statutory, actual and trebles damages.
4

5
6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff, MICHAEL KATILAS, respectfully prays for a
8 judgment as follows:
9

- 10 a. All actual damages suffered pursuant to 47 U.S.C. §
11 227(b)(3)(A);
12 b. Statutory damages of \$500.00 per telephone call pursuant to 47
13 U.S.C. § 227(b)(3)(B);
14 c. Treble damages of \$1,500.00 per telephone call pursuant to 47
15 U.S.C. §227(b)(3) or alternatively that amount for all calls
16 made after Defendant was notified that they were calling the
17 wrong person and wrong number;
18 d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3);
19 e. Any other relief deemed appropriate by this Honorable Court.
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DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, MICHAEL KATILAS, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

DATED: 3/6/2020

KIMMEL & SILVERMAN, P.C.

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